

**REMARKS/ARGUMENTS**

Reconsideration of this application, in view of the foregoing amendment and the following remarks and arguments, is respectfully requested.

Claims 1-10, 12-25 and 27 are currently pending in this application. By the foregoing amendment Claims 3, 12, 13 and 21-25 have been cancelled without prejudice or disclaimer; Claims 1, 2, 4-6 and 27 have been revised; and new Claims 28-34 have been added to afford the applicants the breadth and scope of patent protection to which they are entitled. Accordingly, Claims 1, 2, 4-10, 14-20 and 27-34 are now present in this application for consideration and allowance.

In the June 25, 2008 Final Office Action the following claim rejections were made, such rejections being respectfully traversed for reasons subsequently set forth herein.

1. Claims 1, 2, 4-8, 15, 16 and 27 stand finally rejected under 35 USC §102(b) as being anticipated by U.S. Patent Application Publication 2004/0093082 of Ferree;
2. Claim 9 stands finally rejected under 35 USC §103(a) as being unpatentable over Ferree in view of U.S. Patent 5,895,428 to Berry;
3. Claim 10 stands finally rejected under 35 USC §103(a) as being unpatentable over Ferree in view of U.S. Patent 5,401,269 to Buttner-Janz et al;
4. Claim 14 stands finally rejected under 35 USC §103(a) as being unpatentable over Ferree in view of U.S. Patent 6,350,283 to Michelson;
5. Claim 17 stands finally rejected under 35 USC §103(a) as being unpatentable over Ferree in view of U.S. Patent 5,776,197 to Rabbe et al;
6. Claim 18 stands finally rejected under 35 USC §103(a) as being unpatentable over Ferree in view of U.S. Patent 4,772,287 to Ray et al; and
7. Claims 19 and 20 stand finally rejected under 35 USC §103(a) as being unpatentable over Ferree in view of U.S. Patent 6,156,067 to Bryan et al.

**1. The Anticipation Rejection of Claims 1, 2, 4-8, 15, 16 and 27:**

Via independent Claims 1, 5 and 27, each of applicants' Claims 1, 2, 4-8, 15, 16 and 27 specifies **an elongated member connected to and joining** the recited motion-controlling members which are positioned between first and second plates (as representatively illustrated in FIG. 3a of the present applicants' drawings). In Ferree, there is no disclosure of any of the members disposed between the plate portions of an artificial disc replacement being connected to and joined by an elongated member (such as the member 68 in the present applicants' FIG. 3a).

None of the other references currently being applied by the Examiner teaches or suggests this claim limitation. In this regard it should be noted that the Examiner applied U.S. Patent 6,063,121 to Xavier et al against now-cancelled Claim 13 which recited that "the motion-controlling member includes a cord connected between the plurality of elastic members". The Examiner contended that Xavier et al "teaches a vertebral prosthesis using a cord with the motion-controlling member in col. 4, lines 21-43 for the purpose of reinforcing the motion-controlling member's structure". However, as clearly indicated in this cited portion of the Xavier et al specification and in the Xavier et al drawings, the illustrated steel limiting wires 94 (which the Examiner equates with "cords") are **not** connected to and do not join motion-controlling members positioned **between** first and second plates - the wires 94 are connected to and join **the plates themselves**.

For at least these reasons it is respectfully submitted that (1) Claims 1, 2, 4-8, 15, 16 and 27 are not anticipated by the Ferree reference, and (2) none of the other references currently being applied by the Examiner cures the above-noted deficiency in Ferree. Claims 1, 2, 4-8, 15, 16 and 27 are accordingly seen to be in a condition for allowance.

## **2. The Obviousness Rejections:**

Claims 9, 10, 14 and 17-20 all depend from independent Claim 5 which, at least due to its recitation of the above-discussed elongated member that is attached to and joins the specified plurality of motion-controlling members between the first and second plates, is clearly and patentably distinguishable over all of the prior art currently being applied by the Examiner to the claims now present in this application. For at least the reason that Claims 9, 10, 14 and 17-20 depend from allowable Claim 5, these claims are seen to be allowable as well.

With respect to dependent Claims 9, 10, 14 and 17-20, the above-noted deficiencies in the Ferree and Xavier et al references relative to Claim 5 are in no manner cured by any of the other references currently being applied by the Examiner, such other references having been applied by the Examiner for teachings therein unrelated to applicants' claimed feature of an elongated member attached to and joining motion-controlling members disposed between first and second plates. Specifically, these other references were applied against dependent Claims 9, 10, 14 and 17-20 solely for the below-listed teachings in such references:

**Berry** - amorphous oxide coating on plates

**Buttner-Jantz** - projection on articulation member

**Michelson** - bio-resorbable material on elastic members

**Rabbe et al** - hollow portions on elastic members

**Ray et al** - using gel in elastic members

**Bryan et al** - elastic members having spherical or wheel shapes

For at least the foregoing reasons it is respectfully submitted that Claims 9, 10, 14 and 17-20 are patentably distinguishable over all of the references currently being applied by the Examiner, whether such references are considered singly or in any combination thereof.

**3. New Claims 28-34;**

New Claims 28 and 29 depend from allowable Claim 27 and are thus seen to be in a condition for allowance as well.

New Claims 30 and 31 depend from allowable Claim 1 and are thus seen to be in a condition for allowance as well.

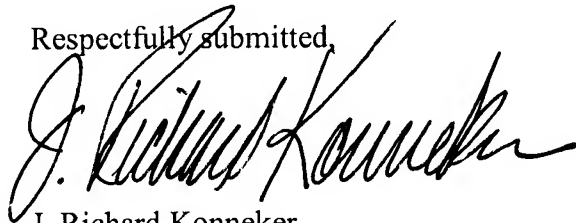
New Claims 32 and 33 depend from allowable Claim 5 and are thus seen to be in a condition for allowance as well.

New independent Claim 34 recites “a plurality of motion restraining members disposed between the first and second plate members, outwardly circumscribing the articulation member, and **being strung together, necklace-like, by an elongated joining member**”. As discussed above, this limitation is neither disclosed nor in any manner suggested by any of the references currently being applied by the Examiner. New Claim 34 is thus seen to be in a condition for allowance.

In view of the foregoing amendment, remarks and arguments, all of the claims currently pending in this application are now seen to be in a condition for allowance. A Notice of Allowance of Claims 1, 2, 4-10, 14-20 and 27-34 is therefore earnestly solicited.

The Examiner is hereby requested to telephone the undersigned attorney of record at 972/739-8612 if such would further or expedite the prosecution of the instant application.

Respectfully submitted,




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